Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-87

GEORGE MIHALOPOULOS, Petitioner,

v.

IDEAL CEMENT COMPANY,

a corporation, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

George Mihalopoulos,
A seaman, In propria persona
250 Kearny Street
San Francisco, California 94108

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PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

George Mihalopoulos, a seaman, acting in propria persona prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above entitled case on May 16, 1974.

CITATION TO OPINIONS BELOW

The judgment on jury verdict from the U.S. Dist. Court for the North. Dist. of Calif., Civil Action File No. 71-231 LHB, that was rendered

is unreported and is printed in Appendix A hereto, infra, p. 17. The memorandum opinion of the Court of Appeals for the Ninth Circuit that was rendered is unreported and is printed in Appendix A hereto, infra, p. 18.

JURISDICTION

Jurisdiction is founded on the United States Constitution, Article III, Sec. 2, 28 U.S.C. § 1333(1); 46 U.S.C. § 688; 28 U.S.C. § 1252; and 28 U.S.C. § 1916. This is an admiralty or seaman's suit.

QUESTIONS PRESENTED

1. Whether any parties involved in a civil suit in a district court are deprived of their Constitutional rights as applicable to Amends. I, V, VII and XIV at a public trial, when the litigating parties and the public are not permitted and are denied the opportunity to personally observe all the jurors gathered simultaneously in the jury box and in open court after the jury's

return from a lengthy overnight recess and prior to any further continuation of the jurors' deliberations.

2. Whether any parties involved in a civil suit in a district court are deprived of their Constitutional rights as applicable to Amends. I, V, VII, and XIV at a public trial when the impanelled jury of six, after a lengthy overnight recess, is not permitted to be assembled by the district court in a complete body, so that the district court can give to the jurors a brief format or general outline dealing with the district court's "Instructions to the Jury" of the previous day, in order to sufficiently refresh the jurors' recollection or recall, thus enabling and assisting the jurors in their further deliberations in rendering a fair and just verdict.

3. Whether any parties in an appeal to the circuit court of appeals are deprived of their Constitutional rights of due process as applicable

to Amends. V and XIV and Amend. I are hindered in their appeal when the district court has failed to properly maintain records of the trial proceedings and when all parties concerned have failed to account for a deficiency in the transcript involved which, as in the case at hand, shows a lapse or void of 74 minutes when demonstrated by the optimal rate of speaking of 125 to 150 words per minute.

STATEMENT

With all proper and due respect to all parties concerned, I would like to state that I am a seaman who is now acting in propria persona.

On February 4, 1971, my attorney at that time, Mr. John Victor Tilly of Jennings, Gartland and Tilly, 352 World Trade Center, S. F., Calif. 94111, filed a Complaint for Damages on my behalf for personal injury under the Jones Act and General Maritime Law in the U. S. District Court, Northern Dist. of Calif. The

defendant in the case (No. C-71-231-LHB) was Ideal Cement Company, a corporation.

The disputed factual issues were tried before an impanelled jury of six members and two alternates. The trial began Jan. 15, 1973 and ended Jan. 23, 1973. The disposition of the district court was an adverse judgment rendered against myself, the plaintiff.

On Feb. 21, 1973, a notice was filed by me with the district court discharging my attorney and on that same date I filed, in propria persona, a Notice of Appeal to the 9th Cir. Ct. of Appeals. This case was numbered 73-1797.

My brief was filed with the appeals court on Sept. 15, 1974, in which I raised nine questions relating to my Constitutional rights.

On May 16, 1974 an order was issued by the appeals court affirming the lower court's judgment.

It is my assertion that, during the course of the various court proceedings, several

arbitrarily oppressive and unjust events occurred in the district court which are contrary and repugnant to the U. S. Constitution.

One of those events took place during the jury's deliberations on Jan. 22 and 23, 1973 and is reflected on p. 69 (transcript) in which the court "will recess this trial of the action for the deliberation in this case until 11:00 o'clock tomorrow"; followed by a brief admonition; then by the clerk's statement that "Court is recessed until 11:00 o'clock a.m."

On the following day, after the overnight recess, the district court never reconvened. Neither the trial transcript nor the court record reflects that it had done so, because, in actual fact, it never did. Furthermore, although my attorney and I were in the court room together long before 11:00 a.m., we were not witness to any such event as a complete or partial gathering of any or all of the impanelled jurors before and in open court, nor were we witness to any

court proceedings directly involving any partial or simultaneous polling of attendance whatsoever of any or all of the trial jurors in attendance prior to and before any further continuation of that jury's further deliberation of a verdict; whereby neither my attorney nor myself nor the public were afforded any opportunity whatsoever to personally observe all the jurors simultaneously in the jury box and in open court so that the jurors could then go in a full and complete body into the action for further deliberation in this case in the rendering of a fair and just verdict.

In this instance, the district court was in error when it elected not to reconvene as it had been instructed.

Additionally, when the district court failed to reconvene at that particular time, it set into motion obvious circumstances that jeopardized the rendering of a fair and just verdict; simply

because there is no earthly assurance that a

imately 19 hours; at home and with other matters to occupy their minds; would retain sufficient recollection or recall without the district court reconvening with the complete jury in attendence in order to give the jurors a brief format or general outline dealing with the district court's "Instructions to the Jury" of the previous day in order to sufficiently refresh the jurors recollection or recall; thus enabling and assisting the jurors in their further deliberations in rendering a fair and just verdict, instead of leaving it to chance.

My Constitutional rights as applicable to Amends. I, V, VII and XIV were therefore denied me in the above described events.

Acting as my own attorney, I have repeatedly made various efforts to account for the deficiencies in the trial transcript of this case No. 71-231-LHB, by correspondence and phone calls

to the parties directly involved. Partial records pertaining to this are in the files or records for June 19, July 5, Aug. 10 and Aug. 20, 1973 and referred to in a motion to the appeals court on Aug. 7, 1973.

For the purpose of clarity, I have elected to construct the facts in this positive manner:

Page 80 (record, Jan. 22, 1973) shows that: the argument of Mr. Tilly, my attorney, took 1 hour, 5 minutes (10:25 AM to 11:30 AM); the argument of the attorney for Ideal Cement Co. took 1 hour (12:00 N. to 1:00 PM); Mr. Tilly's rebuttal took 25 minutes (1:00 PM to 1:25 PM).

In the partial trial transcript of Jan. 22, 1973, the argument of Mr. Tilly is shown, as recorded by the court reporter. (pp. 27 thru 41) The number of words shown as spoken by Mr. Tilly in 1 hr. 5 mins. total 3,637; an average rate of 56 words per minute.

In the partial trial transcript of Jan. 22, 1973, the argument of the attorney for Ideal

Cement Co. is shown, as recorded by the court reporter.(pp. 41 thru 63) The number of words shown as spoken by the defendant's attorney in 1 hour total 5,812; an average rate of 97 words per minute.

In the partial trial transcript of Jan. 22, 1973, the rebuttal of Mr. Tilly is shown, as recorded by the court reporter. (pp. 63 thru 67) The number of words shown as spoken by Mr. Tilly in 25 mins. total 822; an average rate of 33 words per minute.

Again for clarity and succinctness, I shall refer to the above in the following manner:

	No. of Words	Time	Words per Min.
Mr. Tilly's Argument	3,637	65 min.	56
Ideal Cement Argument	5,812	60 min.	97
Mr. Tilly's Rebuttal	822	25 min.	33

There is a very wide discrepancy here and it is inconceivable that any attorney addressing a

jury in a presentation of his summation in the argument of any case would speak so slowly that the jury would have difficulty in following him and in keeping their attention upon what he was saying.

On page 1271 of the "Encyclopedia of Educational Research", under the headings of Speech, Voice and Speech research, it states: "Optimal rate of speaking is 125 to 150 words per minute. Rate varies about any normative figure."

At the modest and conventional rate of 135 words per minute, it would mean that Mr. Tilly would have completed his argument (as shown in the transcript) in 27 minutes leaving a void of 38 minutes. It would mean that Ideal Cement Co.'s attorney would have completed his argument (as shown in the transcript in 43 minutes leaving a void of 17 minutes. And it would mean that Mr. Tilly would have completed his rebuttal in 6 minutes leaving a void of 19 minutes. And, if there was any "paper shuffling" involved, it wasn't

that much.

The court record reflects that a total of two hours and thirty minutes were taken up with arguments and rebuttal and yet, as shown above, there is a total void of seventy four minutes, a fact which everyone directly involved has failed to recognize.

As I have demonstrated, there is a 38 minute lapse or void throughout the argument that my attorney presented to the jury on my behalf which is not reflected in the transcript.

Of equal, if not more, importance is the 19 minute lapse or void of words used by my attorney in his rebuttal to Ideal Cement Co.'s argument which are also not reflected in the transcript.

One of the issues that I raised and pursued in my opening brief and reply brief in the appeals court pertained to improper and prejudicial remarks of Ideal Cement Co.'s attorney, certain of which are also not reflected in the

transcript and which I was therefore unable to pursue.

For the above reasons, my appeal was hindered since the missing portions were not available for my use.

I have no cases to cite other than my Constitutional rights to due process of Amends. V and XIV and of Amend. I.

REASONS FOR GRANTING THE WRIT

With all proper and due respect to the court, I assert that procedures of the district court and the events I have related that occurred during the trial of George Mihalopoulos vs. Ideal Cement Company are in severe conflict with the United States Constitution.

In the first and second questions that I have presented to the court are events that are intertwined and for that reason I shall combine them and refer to them as one.

The court record, page 80, reflects that instructions were given by the district court to

the jury on January 22, 1973.

It well may be that 12 jurors may have retained some reliable degree of recall and recollection by virtue of their numbers, but the degree of recollection of 6 jurors, as in this case, is not substantial; nevertheless, this does not erase nor diminish the fact that 19 hours is a long recess without the jury being reconvened to be given a brief format or general outline dealing with the district court's "Instructions to the Jury" of the previous day to refresh the jurors' recall or recollection in order to assist them in rendering a fair and just verdict; and again, 19 hours is a long recess without the jury being reassembled and reintroduced into the atmosphere of the court and introduced to the business they have taken an oath to conduct in, again, the rendering of a fair and just verdict. This is not in keeping with the due process Amends. of V and XIV.

Furthermore, when the court elected not to reconvene, as it had directed on the previous

day, it imposed a censorship that abridged the freedom of speech and assembly of all parties concerned which is contrary to Amend. I.

Additionally, Amend. VI in part states: "and public trial, by an impartial jury". In the same vein, Amend. VII in part states: "The right of trial by jury shall be preserved."

When any of those aspects of a jury trial which should be made public are not made public, the right of a trial by jury and the right of a trial by an impartial jury are no longer preserved; and this in turn infringes upon Amends. V and XIV of due process of law.

I had cited numerous authorities involving freedom of speech in my brief to the appeals court, but at this point I am standing on the basic rights that are afforded and guaranteed by the Constitution.

10,000 words, more or less, can be spoken in 74 minutes at the optimal rate of 135 words per minute and the lack thereof has deprived me

of my Amend. V and XIV right to due process and my Amend. I right to freedom of speech.

Clearly the Constitutional questions presented are of importance and the settlement of these questions by this court is plainly in the public interest.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

George Mihalopoulos

GEORGE MIHALOPOULOS
A seaman,
In propria persona
250 Kearny Street
San Francisco, Calif.
94108

DATED: August 5, 1974

APPENDIX A

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

CIVIL ACTION FILE NO. 71-231 LHB

GEORGE MIHALOPOULOS)
)
vs.) JUDGMENT
)
IDEAL CEMENT COMPANY)

This action came on for trial before the Court and a jury, Honorable Lloyd H. Burke, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged that JUDGMENT be entered in favor of Defendant

Dated at San Francisco, CA, this 23rd day of January, 1973

CHARLES J. ULFERS
Clerk of Court

BY: H. De Loach
Deputy Clerk

DO NOT PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GEORGE MIHALOPOULOS,
Plaintiff-Appellant,

vs.

IDEAL CEMENT COMPANY, a corporation,
Defendant-Appellee.

No. 73-1797

ORDER

(May 16, 1974)

Appeal from the United States District Court
for the Northern District of California

Before: KOELSCH, WALLACE and SNEED,
Circuit Judges.

We have examined each of appellant's nine assignments of error in light of the record on appeal and we conclude that each of them lacks merit and is without sufficient substance to warrant discussion. Appellant has failed to demonstrate that the judgment was other than the product of a full and fair trial by an unbiased jury; we shall not disturb it on appeal.

AFFIRMED.

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In the Supreme Court

OF THE

OCTOBER TERM, 1974

No. 74-87

GEORGE MIHALOPOULOS, *Petitioner*

vs.

IDEAL CEMENT COMPANY, *Respondent*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

BRIEF COUNTERSTATEMENT OF QUESTIONS PRESENTED

The questions presented by the petition for a writ of certiorari are as follows:

1. Whether petitioner was deprived of any constitutional rights by not witnessing the gathering of jurors before continuation of jury deliberations on the second day.

2. Whether error was committed in the trial court by reason of an alleged incomplete transcript on appeal.

3. Whether error was committed by the trial court in not giving a brief outline to jurors of the court's instructions at the start of the second day of jury deliberations.

STATEMENT OF THE CASE

Petitioner, a merchant seaman formerly employed as a tug deckhand aboard the Tug Lake, owned and operated by respondent, Ideal Cement Company, brought this action by a complaint in the trial court to recover damages for aggravation of a pre-existing low back condition. Jurisdiction below existed under the Jones Act. The case came on for jury trial in the court of Judge Lloyd H. Burke on January 15, 1973. Petitioner was represented at trial by John Victor Tilly, Esq. of the firm of Jennings, Gartland & Tilly. On January 23, 1973, the jury returned a unanimous verdict in favor of respondent, Ideal Cement Co. No post-trial motions were made by counsel. Petitioner filed a notice and obtained an order substituting himself *in propria persona* in the place of his attorneys on February 21, 1973, and a notice of appeal was filed the same day. Jurisdiction of the Court of Appeals for the Ninth Circuit existed under 28 U.S.C. §1291.

On May 16, 1974 the Court of Appeals for the Ninth Circuit, by a unanimous decision, affirmed the judgment in favor of respondent and rejected petitioner's assignments of error as "each of them lacks merit and is without sufficient substance to warrant discussion." (See Appendix A) There was no petition for rehearing.

On August 6, 1974, petitioner filed with this court a petition for writ of certiorari. Jurisdiction of this court is not alleged in the petition, but presumably petitioner relies on 28 U.S.C. §1254(1).

ARGUMENT

I. NONE OF THE STANDARD REASONS FOR GRANTING REVIEW OF A FEDERAL COURT DECISION INVOLVING FEDERAL LAW IS PRESENTED HERE.[1]

The court below has decided there were no questions of substantive federal law, much less one which requires settlement by this court. The petition does not assert otherwise. No conflict with this court or another court of appeals is present or asserted. The petition deals only with procedural matters, raising questions which are frivolous, as we show below.

II. THIS CASE PRESENTS NO OTHER APPROPRIATE REASON FOR A GRANT OF CERTIORARI, AS ALL OF PETITIONER'S ASSERTED REASONS ARE UNFOUNDED AND UNIMPORTANT.

A. Jury deliberations were under the control and supervision of the United States Marshal.

Petitioner cites as error that the jurors were not brought into the courtroom on the morning of January 23, 1973, before adjourning to an adjacent jury room to resume further deliberations. As the jury, once instructed, is thereafter left under the control and supervision of the United States Marshal, no jury deliberations could commence before all jurors were present and accounted for to the satisfaction of the Marshal, who is surely presumed to have done his duty.

---

[1]Supreme Court Rule 19.1(b).

B. The transcript presented on appeal is a correct transcript of the proceedings requested by the Petitioner.

The only transcript requested by the Petitioner consisted of the voir dire of the jury, arguments of counsel, and a portion of the proceedings of January 23, 1973. Petitioner asserts the transcript he ordered on appeal is incomplete. The asserted instances of an incomplete transcript do not substantiate any incompleteness of the transcript of the official court reporter, but rather demonstrate the incompleteness in petitioner's request for a trial transcript.

The alleged incompleteness of the transcript is not alleged to have had any effect upon the proceedings below and, as no transcript was ordered during trial, it could have had no effect on the verdict.

C. No outline or summary of the Court's instructions was requested or required.

Petitioner here for the first time raises the novel assertion that error was committed by the trial court in not summarizing its previous instructions to the jury on the morning of January 21, 1973 before further jury deliberations. No request was ever received from the jury or counsel to re-read any jury instructions. No rule or statute requires the court, on its own initiative or otherwise, to review those instructions before each day's deliberations. No error can be shown from the record as a result of this assertion.

CONCLUSION

For the foregoing reasons, and for petitioner's failure to raise special and important reasons for this court to exercise its discretionary right to review, petitioner submits that the jury verdict rendered in favor of Ideal Cement Co. was supported by substantial evidence and that the affirmance of the judgment upon that verdict by the United States Court of Appeals for the Ninth Circuit must stand. The petition for writ of certiorari should be denied.

Dated, San Francisco, California,
September 4, 1974.

GRAYDON S. STARING,
Attorney for Respondent.

LILLICK, MCHOSE, WHEAT,
ADAMS & CHARLES,
DAVID W. CONDEFF,
Of Counsel.

(Appendix A Follows)

Appendix A

United States Court of Appeals
For the Ninth Circuit

George Mihalopoulos, Plaintiff-Appellant, vs. Ideal Cement Company, a corporation, Defendant-Appellee.	No. 73-1797 ORDER

[May 16, 1974]

Appeal from the United States District Court for the Northern District of California

Before: Koelsch, Wallace and Sneed, Circuit Judges.

We have examined each of appellant's nine assignments of error in light of the record on appeal, and we conclude that each of them lacks merit and is without sufficient substance to warrant discussion. Appellant has failed to demonstrate that the judgment was other than the product of a full and fair trial by an unbiased jury; we shall not disturb it on appeal.

AFFIRMED.

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IN THE

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OCTOBER TERM, 1974

No. 74-87

GEORGE MIHALOPOULOS, Petitioner,

vs.

IDEAL CEMENT COMPANY, Respondent.

On Petition for a Writ of Certiorari to the
United States Circuit Court of Appeals
for the Ninth Circuit

PETITIONER'S REPLY TO BRIEF FOR RESPONDENT IN OPPOSITION

GEORGE MIHALOPOULOS,
A seaman, in propria persona,
250 Kearny Street,
San Francisco, California 94108

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-87

GEORGE MIHALOPOULOS, Petitioner,

vs.

IDEAL CEMENT COMPANY, Respondent.

On Petition for a Writ of Certiorari to the
United States Circuit Court of Appeals
for the Ninth Circuit

PETITIONER'S REPLY TO BRIEF FOR RESPONDENT IN OPPOSITION

STATEMENT OF THE CASE

The Statement of the case as shown by the respondent is, in general, correct except for the respondent's statement that this action was brought to recover damages for "aggravation of a pre-existing low back condition." Respondent is referring to an injury which I had sustained on October 14, 1966, when I jumped over the side of a towboat to rescue a fellow employee who had had an epileptic seizure and fell overboard and was submerged in the waters of the San Pablo Bay underneath

a dredge. The present action was not brought regarding this injury but for a completely new injury sustained while employed by Ideal Cement Co.

ARGUMENT

The issues in this present case are straightforward and clearcut and no amount of strained semantics or verbal diversion can obscure the fact that there are substantial Constitutional issues involved.

Respondent contends in par. C of his argument in his brief in opposition (p. 4) that "Petitioner here for the first time raises the novel assertion that error was committed by the trial court in not summarizing its previous instructions to the jury on the morning of January 21, 1973 before further jury deliberations."

Contrary to the respondent's contention, the issue was clearly raised in my brief to the appeals court. (P. 11)

Respondent also states that "No rule or statute requires the court, on its own initiative or

otherwise, to review those instructions before each day's deliberations."

If that be the case, the Constitutional Amendments which I have consistently referred to are the applicable and designed rights to fill that void.

Additionally, I'd like to say that in my brief to the appeals court (p. 11), I did make the following observation: "I did not find any other authority to cite, although I have been led to believe that his honor, Chief Judge Carter does follow a practice of assembling the jurors to give them this type of procedure in refreshing the recollection of the jury."

The date given by the respondent is incorrect and should be shown as Jan. 23, 1973.

In par. B (p. 4) of the respondent's brief, the respondent has failed to recognize or else has totally ignored the fact that there are lapses and missing portions from the transcript of the arguments of both counsel.

The parts of the transcript which I ordered from the court reporter were: 1. the voir dire, 2. the arguments of both counsel and 3. the entire proceedings of Jan. 23, 1973; and I still assert and maintain that the transcript dealing with the arguments of counsel is incomplete as received from the court reporter and it did affect the judgment of the appeals court because these missing portions pertained to improper and prejudicial remarks which did in fact affect the verdict of the district court.

At this point I'd like to make the comment that an individual has the assurance and guarantee of freedom of speech through communications, but they are of no value whenthat freedom can be abridged by a failure to recognize or by totally ignoring those communications.

In par. A (p. 3) of the respondent's brief, the respondent tends to speculate that "the jury, once instructed, is thereafter left under the control and supervision of the United States Marshall.

In the reporter's partial trial transcript of the proceedings in the district court of the arguments of counsel, I have, in addition, what I know to be the entire transcript for the rest of the day of Jan. 22, 1973, which begins after the judge's instructions to the jury, and which is comprised of pp. 67, 68 and part of 69 and, in addition, I have the entire transcript of the proceedings of Jan. 23, 1973 which is comprised of pp. 69, 70 and 71. There is no mention or any reference whatsoever made in this transcript of an open trial about any United States Marshall; nor is there any name or reference whatsoever shown in the court record as to any assigned United States Marshall; and there is no assurance that one ever was present other than the assumption of the respondent that he was.

In this instance, if I speculate on the respondent's assumption that there was a Marshall present, this does not diminish the argument that I have asserted in my petition.

CONCLUSION

For the foregoing reasons, petitioner again prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

George Mihalopoulos

GEORGE MIHALOPOULOS,
A seaman, in propria persona,
250 Kearny Street
San Francisco, California 94108

DATED: September 12, 1974